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Comments: The attached documents include American Rivers formal objection to the Nez Perce-Clearwater Forest Plan.

January 26, 2024

Nez Perce-Clearwater National Forests Attn: Cheryl Probert, Forest Supervisor 24 Fort Missoula Road

Missoula MT 59804

RE: Objection to the Nez Perce-Clearwater National Forests Land Management Plan (Draft Record of Decision, Forest Plan, and Final Environmental Impact Statement)

Dear Forest Supervisor Probert and Objection Reviewing Officer,

American Rivers hereby formally objects to the Draft Record of Decision for the Revised Forest Plan for the Nez Perce–Clearwater National Forests (Nov. 2023) ([Idquo]Draft ROD[rldquo]), the Final Environmental Impact Statement for the Land Management Plan for the Nez Perce-Clearwater National Forests (Nov. 2023) ([Idquo]FEIS[rldquo]), and the 2023 Land Management Plan for the Nez Perce- Clearwater National Forests (Nov. 2023) ([Idquo]Forest Plan[rldquo]). We do so following the regulations in 36 CFR 219. The Draft ROD was dated and published in November 2023 by the Responsible Official, Forest Supervisor Cheryl Probert. Subsequently, the legal notice of the objection period appeared in the newspaper of record, the Lewiston Tribune, on November 28, 2023. The 60-day objection period thus ends on January 26, 2024.

Lead Objector

Lisa Ronald

Western Montana Associate Conservation Director American Rivers

About American Rivers

Founded in 1973, American Rivers works to protect wild rivers, restore damaged rivers, and conserve clean water for people and nature. Headquartered in Washington, D.C., American Rivers has offices and members in every region of the country, including in the Northern Rockies where the Nez Perce-Clearwater National Forests is located. Since our founding, Wild and Scenic River conservation, including legislative designations and eligibility determinations on national forests, have been a primary focus of the organization.

Summary

The following is a summary of the sections in this document.

1. Statement of the issues and parts of the Forest Plan to which this Objection applies.
2. Concise statement explaining the objection and suggesting how the decision may be improved.
3. Detailed Statement of the Objection.

1. The Forest Service lacks the authority under the WSRA or its 2012 Planning Rule to use [ldquo]suitability studies[rdquo] to administratively release from interim protection those rivers found eligible for designation under the Act.
2. The Forest Service incorrectly declined to consider in detail alternatives that would add or maintain protection for eligible rivers.
3. For those alternatives actually considered in the FEIS, the Forest Service failed to explain, for each considered alternative, what the impacts would or would not be for potential wild and scenic rivers.
4. The Forest Service made numerous conclusions inconsistent with USFS policy and guidance and factually unsupported findings in its FEIS Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability and Draft ROD Appendix I: Wild and Scenic River Suitability Determination and the Outstandingly Remarkable Values on the Nez Perce Clearwater, which, in turn, led to incorrect [ldquo]not suitable[rdquo] determinations.

#### Broad Non-Suitability Determination Issues

- 1.
- 1.
1. The Forest Service incorrectly found 22 rivers providing climate refugia not suitable, inconsistent with administrative climate change adaptation guidance and agency policy.
2. The Forest Service incorrectly found many rivers not suitable, inconsistent with Endangered Species Act recovery goals.
3. The Forest Service incorrectly found many rivers not suitable based on bias towards curtailments, limits, and foreclosures.
4. The Forest Service incorrectly found many rivers not suitable based on misinterpretations of limitations on timber and fuels management activities.
5. The Forest Service incorrectly found many rivers not suitable based on misinterpretations of limitations on restoration activities.
6. The Forest Service incorrectly found many rivers to be not suitable because they are in designated wilderness.
7. The Forest Service incorrectly found many rivers to be not suitable because they are protected by other unspecified plan components.
8. The Forest Service incorrectly found many rivers to be not suitable because it wrongly asserts they lack exemplary values.

#### River-Specific Non-Suitability Determination Issues

- i. The North Fork Clearwater River was incorrectly found not suitable.
- j. The South Fork Clearwater River was incorrectly found not suitable.
- k. Bostonian Creek, Boundary Creek, Caledonia Creek, Graves Creeks were incorrectly found not suitable.
- l. Crooked Fork Creek, Brushy Fork Creek, Hopeful Creek were incorrectly found not suitable.
- m. Upper Lochsa, Big Sand Creek, North Fork Storm Creek, South Fork Storm Creek were incorrectly found not suitable.

- n. Bear Creek, Cub Creek, and Brushy Fork Creek were incorrectly found not suitable.
- o. Moose Creek, North Fork Moose Creek, West Moose Creek, East Fork Moose Creek, Rhoda Creek, Wounded Doe Creek were incorrectly found not suitable.
- p. Lolo Creek was incorrectly found not suitable.
- q. Elk Creek was incorrectly found not suitable.
- r. Beaver Creek, Elmer Creek, Isabella Creeks were incorrectly found not suitable.
- s. Lake Creek (Lochsa tributary) was incorrectly found not suitable.

5. The Forest Service incorrectly adopts riparian zone policies that do not adequately protect ESA-listed species.

D. A statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection.

A. Statement of the issues and parts of the Forest Plan to which this Objection applies.

In the Draft ROD, FEIS, and Forest Plan, the Forest Service incorrectly uses the forest planning process to make unlawful and unsupported determinations that 77 of the 88 rivers found to be eligible for designation under the Wild and Scenic Rivers Act (WSRA) are not suitable for designation. This, in turn, results in a decision by the Forest Service not to afford those 77 [ldquo]not suitable[rdquo] rivers the interim protections required by the 2012 Planning Rule as necessary to protect and enhance their free-flowing condition and their outstandingly remarkable values (ORVs). The process followed and conclusions reached by the Forest Service in this regard are contrary to the WSRA and the 2012 Planning Rule, 36 C.F.R. Part 219.

The parts of the Draft ROD, FEIS, and Forest Plan to which this Objection applies include, but are not limited to, the following:

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\* The Draft ROD at page 11, finding 77 rivers eligible but not suitable for inclusion in the Wild and Scenic Rivers system, and declining to apply interim protection measures to them in order to adequately protect and enhance their ORVs;

\* The FEIS at page 47 (Section 2.3.11), which rejected consideration of an alternative that would have managed all 88 rivers found eligible for inclusion in the Wild and Scenic Rivers system using interim protection measures so as to protect and enhance their ORVs;

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\* The FEIS at page 47 (Section 2.3.12), which rejected consideration of an alternative that would have found all 88 rivers found eligible for inclusion in the Wild and Scenic Rivers system to also be suitable for inclusion, based upon undefined [ldquo]resource opportunities and concerns within and/or adjacent to these river corridors[rdquo] that [ldquo]were determined to warrant management actions that would be inconsistent with management direction under wild and scenic classification.[rdquo]

\* The FEIS, Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability (Nov. 2023) which, in multiple locations, provides an incomplete and unsupported consideration of the suitability for inclusion in the National Wild and Scenic Rivers System of 77 of the 88 rivers that were determined eligible for inclusion, and recommends that those 77 rivers be found not suitable.

B. Concise statement explaining the objection and suggesting how the decision may be improved.

In the Draft ROD, FEIS, and Forest Plan, the Forest Service incorrectly and unlawfully relied upon a Forest Service-initiated suitability study as the basis for the agency's determination that only 11 river segments within the Nez Perce-Clearwater National Forest are "suitable" for inclusion in the National Wild and Scenic Rivers System, and that one additional river should retain its "eligible" status, and that only those 12 rivers should receive interim protection measures to preserve their free-flowing state and their ORVs. See ROD at 57; FEIS at 43; Forest Plan at 97. The Forest Service's decision in this regard runs counter to the WSRA, the agency's own 2012 Planning Rule at 36 C.F.R. Part 219, and other pertinent agency guidance. It is also virtually without precedent; to the best of our knowledge, nearly every other National Forest that has completed a new or revised forest plan since the promulgation of the 2012 Planning Rule has not conducted suitability determinations as part of the forest planning process.

The Forest Service's flawed decision effectively excludes 77 rivers or river segments within the Nez Perce-Clearwater National Forest from further consideration of their potential for inclusion in the National Wild and Scenic Rivers system, and administratively strips them of their interim protection under the WSRA and the 2012 Planning Rule. Under the Draft ROD and Forest Plan, these rivers would no longer be managed in a way that protects their wild and scenic eligibility.

In addition, the Draft ROD, FEIS, and Forest Plan is contrary to the WSRA, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA) in several other respects, including but not limited to the following:

1. The Forest Service failed to consider a reasonable range of alternatives with respect to the finding of suitability for WSRA designation for the 88 rivers addressed in the FEIS(1), in violation of NEPA and its implementing regulations.

See 40 C.F.R. [sect] 1502.14. In particular, the Forest Service (a) failed to consider an alternative that would find each "eligible" river to be "suitable" for inclusion in the Wild and Scenic Rivers System; (b) failed to consider an alternative that would defer any findings of non-suitability until a later date, thereby preserving each eligible river's protected status under the Forest Plan; and (c) failed to consider an alternative that would find suitable all 39 rivers found suitable under at least one of the considered alternatives.<sup>2</sup>

2. The Forest Services deviated from its own guidance, including Chapter 80 (Wild and Scenic Rivers) of Section 1909.12 (Land Management Planning) the Forest Service Handbook (FSH), by giving a cursory, incomplete, or inaccurate assessment of the suitability of 77 of the 88 rivers considered for inclusion in the National Wild and Scenic Rivers System

The Forest Service's decision should be modified by revising the Draft ROD, FEIS, and Forest Plan to

clarify that all 88 rivers or river segments found to be eligible for inclusion in the National Wild and Scenic Rivers system will be managed to protect and enhance their free-flowing state and their ORVs. More specifically, the Forest Plan should be revised to include [ldquo]plan components, including standards or guidelines, to provide for . . . management of rivers found eligible . . . for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.[rdquo] 36 C.F.R. [sect] 219.10(b)(1)(v).

While we question the legal basis and need for the Forest Service conducting any suitability study alongside Forest Plan revisions, at minimum, the FEIS should be revised to include consideration of the alternatives mentioned above in paragraph B(1), and to include a more robust and complete suitability study that complies with the FSH.

#### C. Detailed Statement of the Objection.

1. The Forest Service lacks the authority under the WSRA or its 2012 Planning Rule to use [ldquo]suitability studies[rdquo] to administratively release from interim protection those rivers found eligible for designation under the Act.

The Forest Service lacks the legal authority to use suitability studies as a means to forever release from interim protection and abandon rivers or river segments deemed by the Agency to be [ldquo]unsuitable[rdquo] for designation under the Act, either as part of or separate from the forest planning process. This is especially true where those rivers have been found eligible for designation under the Act.

Section 5(d)(1) of the WSRA states that, [ldquo][i]n all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas[.][rdquo] 16 U.S.C. [sect] 1276(d)(1). The Act itself does not define what a [ldquo]potential national wild, scenic and recreational[rdquo] river is, but federal case law suggests that the phrase means rivers that may warrant designation under the Act, as opposed to rivers the Forest Service may wish to exclude from further consideration. See, e.g., *Ctr. for Biological Diversity v. Veneman*, 335 F.3d 849, 854 (9th Cir. 2003), opinion withdrawn and superseded on reh[rsquo]g, 394 F.3d 1108 (9th Cir. 2005) (construing 16 U.S.C. [sect] 1276(d)(1) in the context of rivers that the Forest Service had [ldquo]determine[d] to be potentially eligible for inclusion in the national wild and scenic rivers systems.[rdquo]) (emphasis added by the Ninth Circuit).

Indeed, *Veneman* lends credence to an interpretation of the WSRA that permits the use of suitability studies only as vehicles for recommendations to Congress[mdash]not for the removal of interim protections for eligible rivers. As the Ninth Circuit explained,

[F]or rivers added to the WSRS through the inventory process, the Forest Service determines the eligibility of a particular river first by establishing whether the river is free-flowing and possesses one or more ORV. If the river is found to have both characteristics, the Service classifies the river as [ldquo]wild,[rdquo] [ldquo]scenic,[rdquo] or [ldquo]recreational.[rdquo] Once the river has been deemed [ldquo]eligible,[rdquo] the Service conducts a

suitability study before Congress makes the ultimate decision regarding designation.

Id. at 855 (emphasis added). The Veneman court's reference to a "suitability study" plainly implies an administrative antecedent to Congressional action— an agency recommendation only, not a license to remove substantive interim protections for rivers already deemed eligible for designation under the WSRA. The ability of Congress to make "the ultimate decision regarding designation" would clearly be frustrated if eligible rivers lost their interim protections through administrative action resulting from an agency-initiated suitability study.

Consistent with Section 5(d)(1) of the WSRA, the Forest Service's own 2012 Planning Rule imposes obligations on the Agency to consider the eligibility of rivers for inclusion, and does not authorize "non-suitability" determinations as part of forest planning. First, the 2012 Planning Rule requires the agency, as part of the forest planning process, to:

[i]dentify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

36 C.F.R. [sect] 219.7(c)(2)(vi) (emphasis added). Like the WSRA itself, the focus of the 2012 Planning Rule is thus on the identification of eligible rivers, and the rule says nothing about identification of rivers deemed suitable (or not) for designation. This stands in sharp contrast to the immediately preceding subsection of the rule, which instructs the Forest Service to "[i]dentify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation." 36 C.F.R. [sect] 219.7(c)(2)(v) (emphasis added). Had the Forest Service intended for its Regions to identify the suitability of rivers as part of forest planning, it would have stated so explicitly—as it clearly knows how to do.

The 2012 Planning Rule also requires new or revised forest plans "[t]o provide for" the protection of:

designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.

36 C.F.R. [sect] 219.10(b)(v) (emphasis added). The rule's use of the conjunctive "or" indicates that the Forest Service is required to protect rivers that fall within either of the two categories. Thus, rivers "found eligible" must be protected, just as rivers "determined suitable" for inclusion in the National Wild and Scenic River system must be protected by a revised forest plan.

Support for this approach is found in Forest Service guidance. The Forest Service Handbook, for example, makes clear that because Congress is the ultimate decider on Wild and Scenic River designation, rivers found by the Agency to be eligible should be managed so as to preserve their eligibility characteristics until Congress makes its decision. See Forest Service Handbook, FSH 1909.12[ndash]Land Management Planning Handbook, Ch. 80[ndash]Wild and Scenic Rivers, at 26[ndash]27 ([ldquo]Forest Service Handbook[rdquo]) ([ldquo]The planning rule at 36 CFR 219.10 provides for interim management of Forest Service-identified eligible or suitable rivers or segments, to protect their values prior to a congressional decision whether to designate them as part of the National System.[rdquo]).

2. The Forest Service incorrectly declined to consider in detail alternatives that would add or maintain protection for eligible rivers.

A comprehensive analysis of viable alternatives is [ldquo]the heart of the environmental impact statement.[rdquo] 40 C.F.R. [sect] 1502.14 (2016). NEPA requires federal agencies to [ldquo][r]igorously explore and objectively evaluate all reasonable alternatives to a proposed project.[rdquo] *Ctr. For Biological Diversity v. Nat[rsquo]l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (quoting 40 C.F.R. [sect] 1502.14(a) (2016)). This requirement includes an analysis of alternatives that [ldquo]will avoid or minimize[rdquo] a proposal[rsquo]s adverse effects. 40 C.F.R. [sect] 1500.2(e) (2016); see also 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981) (CEQ[rsquo]s Frequently Asked Questions on NEPA). [ldquo]One of the benefits of a comprehensive environmental impact statement, which requires that all reasonable alternatives be analyzed and evaluated, is that it may be able to break through any logjam that simply maintains the precarious status quo.[rdquo] *National Wildlife Fed[rsquo]n v. National Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 876 (D. Or. 2016). Comprehensive analysis of alternatives [ldquo]may allow, even encourage, new and innovative solutions to be developed, discussed, and considered.[rdquo] *Id.*

The Forest Service incorrectly rejected from detailed consideration four alternatives that would have afforded additional protection to rivers found eligible, or potentially eligible, for designation under the WSRA. See FEIS at 47. These alternatives were proposed by river conservation groups, including American Rivers (DEIS comments April 2020), American

Whitewater (DEIS comments April 2020), and Idaho Rivers United (DEIS comments April 2020).

One rejected alternative would have found additional rivers within the national forest to be eligible for designation under the WSRA. See FEIS at 47, [sect] 2.3.9. The Forest Service rejected that alternative out of hand, based upon its own internal finding that just 88 rivers in the national forest are eligible. *Id.* The Forest Service all but admits that its process[mdash]begun in 2015 and presumably based upon data and information available to its [ldquo]interdisciplinary team[rdquo] at that time[mdash]ignored, or at best failed to incorporate and substantively respond to, the additional information (including identification of additional ORVs for additional rivers within the national forest) provided by stakeholders. *Id.* This approach is flawed and contrary to NEPA.

Another rejected alternative would have deferred any suitability studies or findings of non-suitability, and instead managed all eligible rivers under interim protection. See FEIS at 47,

[sect] 2.3.10. The FEIS does not explain why this alternative is inconsistent with the purpose and need of the revised Forest Plan, and instead incorrectly asserts that the [ldquo]2012 Planning Rule requires that National Forests include the evaluation of rivers for potential inclusion as a Wild and Scenic River under the Wild and Scenic River Act of 1968.[rdquo] Id. This statement, as applied here by the Forest Service, grossly misstates the applicable legal and regulatory requirements. As stated above, the WSRA requires that [ldquo]consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas[rdquo] in the planning process, 16 U.S.C. [sect] 1276(d)(1), while the 2012 Planning Rule requires the Forest Service to both [ldquo][i]identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System[rdquo] and [ldquo]provide for . . . [the] management of rivers found eligible[rdquo] for the system. 36 C.F.R. [sect][sect] 219.7(c)(2)(vi), 219.10(b)(v). These provisions do not require any suitability study as part of the forest planning process, nor do they allow for any definitive findings of non-suitability (and resulting stripping of interim protections) of the kind made by the Forest Service here, and indeed the FSH plainly gives the Forest Service discretion not to make suitability determinations as part of the forest planning process. FSH 1908.12, Ch. 83.

A third rejected alternative would have continued to provide interim protective management to all rivers found eligible for designation under the WSRA. See FEIS at 47, [sect]

2.3.11. The Forest Service incorrectly rejected this alternative based solely on its mis-reading of the FSH for the proposition that [ldquo]eligible rivers found not suitable need not be managed under interim protection measures[.]rdquo] Id. This goes against decades of Forest Service precedent and past practice, which until very recently has always afforded interim protections to eligible rivers so as to preserve their free-flowing condition and ORVs pending Congressional action.

A fourth rejected alternative would have included all 88 eligible river segments as suitable. See FEIS at 47, 2.3.12. Importantly, the Forest Service Handbook explicitly directs the Forest Service to include an alternative that finds all eligible rivers suitable. Section 83.31 of Chapter 80 states that for agency-initiated suitability reports the Agency should follow the direction regarding Congressionally-mandated study reports in Section 83.32a through 83.32h, in which the Handbook states: [ldquo]Study reports generally include the following types of alternatives:

[hellip] 2. An alternative in which all eligible segments are found suitable and are recommended for Congressional designation.[rdquo]

Finally, the Forest Service did not consider an alternative that included a recommendation to retain eligibility for some or all of the not suitable rivers and designate said eligible segment(s) at a less restrictive classification (for example, scenic to recreational) to allow a specific resource activity. Section 83.31 of Chapter 80 states that for agency-initiated suitability reports the Agency should follow the direction regarding Congressionally-mandated study reports in Section 83.32a through 83.32h, in which the Handbook states: [ldquo]An alternative in which some eligible segments are found suitable and are recommended for Congressional designation, while other eligible segments are found not suitable. This type of alternative may also include a recommendation to



designate eligible segment(s) at a less restrictive classification (for example, scenic to recreational) to allow a specific resource activity.[rdquo]

In sum, the Forest Service provided insufficient basis to reject or fail to consider these alternatives, and since each of them is consistent with the purpose and need of the Forest Plan, the FEIS should be revised to consider all of them in detail.

3. For those alternatives actually considered in the FEIS, the Forest Service failed to explain, for each considered alternative, what the impacts would or would not be for potential wild and scenic rivers.

When the Forest Service chooses to conduct a suitability study as part of forest planning, the FSH requires that

every study report and environmental analysis document must present an array of alternatives broad enough to encompass all reasonable proposals for use of the river area. Each alternative should be clear as to whether the river segment is found suitable or not suitable, and whether interim protection measures will apply or not. Each alternative should identify the plan components that would be added, removed, or modified. If the emphasis of an alternative is to protect the outstandingly remarkable values by means other than designation, include in that alternative any plan components needed to do so. FSH 1908.12, Ch. 83.32d.

The discussion of the alternatives considered in the FEIS falls short of this requirement:

\* For Alternative W, the FEIS summarily states only that [ldquo]Alternative W includes twelve rivers as suitable wild and scenic rivers[rdquo] without mention of interim measures or any plan components that would be added, removed, or modified as a result of that alternative. FEIS at 40.

\* For Alternative X, the FEIS states only that [ldquo]Alternative X allocates zero suitable wild and scenic rivers. Rivers that are referred to in the State of Idaho Department of Water Resources River Plan are managed consistently with that plan, which includes provisions to protect water quality and maintain free flow.[rdquo] FEIS at 40. There is no discussion of which rivers, if any, are referred to in the Idaho River Plan, or of what provisions protect the water quality and free-flowing condition of those rivers.

\* For Alternative Y, the FEIS states that [ldquo]Fourteen rivers are found suitable in Alternative Y, including the South Fork Clearwater and North Fork Clearwater[rdquo] without mention of interim measures or any plan components that would be added, removed, or modified as a result of that alternative.

Equally problematic and arbitrary is that there is no rational explanation provided in the FEIS or the Study Report included as Appendix F for the allocation of suitable rivers between the various alternatives. Although the FEIS briefly acknowledges that the [ldquo]alternatives vary in the quantity and location of suitable wild and scenic rivers,[rdquo] FEIS at 192, and that the [ldquo]different alternatives recommend varying numbers of rivers for Wild and Scenic suitability and eligibility,[rdquo] FEIS at 489, the Forest Service offers no rational basis for simultaneously considering Alternative Z (which would find 37 rivers suitable for wild and scenic designation) as well as Alternatives W, X, Y, and the Preferred Alternative (which would only find twelve, zero, fourteen, and

eleven rivers, respectively, to be suitable for wild and scenic designation). In short, the number and choice of specifically-proposed suitable rivers included in each alternative is entirely random. This grab-bag approach to assembling a range of alternatives for consideration in the FEIS defies common sense and is contrary to NEPA.

In addition, the Forest Service arbitrarily decided to not disclose the impacts of the action alternatives through a comparison with the No Action Alternative. The Forest Service explained this choice:

Although the No Action Alternative encompasses the greatest acreage and river miles, these river segments are further away from final designation decision than rivers considered in other alternatives. This alternative would maintain the status of these rivers as eligible and defer a suitability study to a later date. A suitability study provides the basis for determining which eligible rivers or river segments should be recommended to Congress as potential additions to the National System. Due to the unknown outcome of a future suitability determination on rivers in the No Action Alternative, a direct comparison to the action alternatives is unwarranted, as it would be speculative. FEIS at 1692.

This statement is flawed for several reasons.

First, the claim that eligible rivers are [ldquo]further away from final designation[rdquo] is not supported by evidence and is false. Designations result from the public working with legislators to craft and pass legislation, largely irrespective of agency determinations. In practice, most modern designations are of eligible streams, and a smaller number are of streams either deemed suitable or not deemed eligible. Suitability determinations are no more valuable than eligibility determinations in securing designations, and indeed the fleeting opinions captured in suitability findings are quickly made irrelevant by elections, staff changes, and changes on the ground.

While Agency testimony is certainly helpful in securing designations, such testimony seldom is (and need not be) supported or limited by a river[rsquo]s suitability. Suitable rivers are no closer to designation than eligible rivers.

Second, speculating on the unknown outcome of a suitability determination is not relevant to comparing the effects of the alternatives under the forest plan. Both eligible and suitable rivers are managed identically in the forest plan. The identical management of eligible streams in the No Action Alternative and the suitable streams in the action alternatives are described in plan components on pages 96 through 98 of the forest plan. Therefore speculating about whether an eligible river will become suitable is irrelevant. Speculating about whether rivers will be designated is both out of scope.

The effect of the unfounded decision to not compare the No Action Alternative is significant. It hides from the public the fact that the Preferred Alternative marks a dramatic loss of river protections. Since 1990 the Forest Service has protected 29 streams totalling 559 miles as potential Wild and Scenic Rivers and would continue to do so under the No Action Alternative, whereas under the Preferred Alternative the Forest Service will only protect 12 rivers as potential Wild and Scenic Rivers totalling 238 miles. This is a massive loss of protections for some of our Nation[rsquo]s finest rivers and streams. The Forest Service should clearly show the effects of all alternatives, including the No Action Alternative, with equal treatment.

4. The Forest Service made numerous false conclusions and unsupported findings in its FEIS Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability and Draft ROD Appendix I: Wild and Scenic River Suitability Determination and the Outstandingly Remarkable Values on the Nez Perce Clearwater, which, in turn, led to incorrect [ldquo]not suitable[rdquo] determinations.

#### Broad Non-Suitability Determination Issues

1.

1. The Forest Service incorrectly found 22 rivers providing climate refugia not suitable, inconsistent with administrative climate change adaptation guidance.

The Biden administration has prioritized climate change and has provided direction regarding operationalization of climate change policies. Executive Order 1408 Sec. 216 Tackling the Climate Crisis at Home and Abroad. Conserving Our Nation[rsquo]s Lands and Waters<sup>3</sup>, the Department of Agriculture[rsquo]s subsequent Action Plan for Climate Adaptation and Resilience<sup>4</sup>, and Secretarial Memorandum 1077-004 Climate Resilience and Carbon Stewardship of America[rsquo]s National Forests and Grasslands<sup>5</sup> created America the Beautiful (30x30), identified threats to water quantity and quality as one of the nation[rsquo]s top five climate threats, and provided planning integration. Further, the Forest Service[rsquo]s Climate Adaptation Plan<sup>6</sup> direct the Agency to [ldquo]fully integrate climate vulnerability assessments and adaptation strategies into land management planning and other planning across landscapes[rdquo] (section 3b), [ldquo]identify and protect climate refugia, such as cold-water streams and cool microclimates, as well as movement corridors for species migration[rdquo] (section 3c), and [ldquo]incentivize and reward work on climate change research and adaptation, environmental justice, and sustainability[rdquo] (section 6b).

Together this body of statutory, regulatory, and administrative guidance allows the Forest Service to use new and innovative tools for climate resilience within the planning process and promotes a culture that encourages employees to do so. Of 88 eligible rivers, 28 were predicted, according to climate shield science<sup>7</sup>, as providing cold water refugia for bull trout and westslope cutthroat trout in 2040 and beyond. Yet only 6 of these rivers were found suitable despite the uniqueness of these streams within the region of comparison and clear administrative direction to prioritize protection of climate refugia. Instead, decision-making in the Draft ROD Appendix I erroneously claims that these important cold water refuge streams are not unique and therefore not worthy of protection.

These 22 rivers identified as providing climate refugia must, at minimum, retain eligibility and interim protections to better protect bull trout, westslope cutthroat trout, and their habitats.

b. The Forest Service incorrectly found many rivers not suitable, inconsistent with Endangered Species Act recovery goals.

Throughout the suitability study, numerous rivers were found to have fish ORVs, many of which are specifically focused on ESA-listed species. A primary objective of the aquatic and riparian plan components is to not retard recovery of ESA listed species or their critical habitat. For the majority of these rivers, it is clearly stated for numerous rivers within the Draft ROD Appendix I that designation would be redundant as [ldquo]Land Management Plan components for fisheries, aquatic resources, and riparian habitats, as well as standard design criteria and mitigations will serve to protect the free flow, water quality, and habitats of these rivers, supporting the preservation of these species[rdquo] (one example see p. 16). This conflicts with statements made within the Draft ROD[rsquo]s Endangered Species Act section that states that the [ldquo]proposed framework programmatic action are Likely to Adversely Affect Bull Trout and their Critical Habitat; Snake River Steelhead and their Critical Habitat; Snake River Spring/Summer Chinook Salmon and their Critical Habitat; and Snake River Fall Chinook Salmon and their Critical Habitat.[rdquo]8 Further, fundings of not suitable for rivers with ESA-listed aquatic species ORVs are contrary to the September 27, 2023 Presidential Memorandum directing all Federal Agencies to act to the full extent of their authority to advance and support salmon and steelhead recovery.9

Given this fact, all rivers that possess ORVs related to ESA-listed aquatic species, as well as special status species, must, at minimum, retain eligibility and interim protections to better protect these species and their habitats.

c. The Forest Service incorrectly found many rivers not suitable based on bias towards curtailments, limits, and foreclosures.

Consistently across river-specific analyses in the Draft ROD Appendix I and FEIS Appendix F, curtailments were given disproportionate and overpowering attention; they are described in detail and with specificity. Curtailments to timber were described for 88% of rivers with curtailments specific to loss of timber base described for 60% of rivers; curtailments to forest management for elk summer and/or winter range were described for 43% of rivers; curtailments to current and/or future motorized use were described for 14 rivers. The analysis also falsely claims that restoration activities would be curtailed within river corridors. Overall, there were only 11 rivers lacking curtailments of any kind, and none of these were deemed suitable.

Enhancements, on the other hand, as the FSH requires [ldquo]reasonably foreseeable potential uses of the land and water that would be enhanced[hellip],[rdquo]10 should receive equal consideration and be described with the same level of attention and detail as curtailments, but were included for less than half of the analyzed rivers. When enhancements were described specific to wildlife, statements were brief and vague, in contrast to the specificity given for timber related curtailments, which consistently included exact numbers of acres. This reveals significant bias in the presentation of curtailments, most so for timber, and the degree to which they factored into ultimate decisions of non-suitability.

Suitability determinations must be re-evaluated based on even treatment of curtailments and enhancements.

d. The Forest Service incorrectly found many rivers not suitable based on misinterpretations of limitations on timber and fuels management activities.

Throughout the analysis and resulting from 4.c. described above, undue focus is given to loss of timber base[mdash]as an example, [ldquo]experience has shown, timber harvest would be extremely limited by these management objectives on the approximately 25,000 acres within the designated corridor.[rdquo]<sup>11</sup> This statement and others like it found throughout are misleading and inaccurately and unnecessarily exaggerate the level of restriction put on agency timber and fuels management activities. In contrast, Agency policy is clear that [ldquo]WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.[rdquo]<sup>12</sup> Specifically, the Forest Service Handbook recommends: [ldquo]A range of vegetation management and timber harvest practices are allowed, if these practices are designed to protect users, or protect, restore, or enhance the river environment, including the long-term scenic character.[rdquo]<sup>13</sup>

Summary by classification from FSH 1909.12 Section 84.3(9):

#### Wild Rivers

Cutting trees and vegetation allowed for: primitive recreation experiences, safety, protection of ORVs, prescribed fire and wildfires (to meet resource objectives or restore/maintain T&E/sensitive species habitat)

#### Scenic/Recreational Rivers

Range of vegetation management and timber harvest practices allowed for: safety, protection/restoration/enhancement of the river environment

These are very permissive standards, based on section 10(a) of the Wild and Scenic Rivers Act which allows uses that do not substantially interfere with river values, and places no undue or significant burden on the Agency. The kind of work being proposed by the Agency - to protect rare habitats, communities, and wildlife habitat - is possible with basic care given to the rivers, which the public expects. Organizational culture perceptions on the Nez Perce-Clearwater National Forest that Wild and Scenic eligibility and suitability hamstringing, overburden, and unnecessarily curtail timber and fuels management activities are false when viewed in light of clear direction provided within the FSH. Wild and Scenic protections allow vegetation management, fire mitigation, endangered species habitat restoration, motor vehicle travel on roads within their corridors, and other activities, as long as they don't diminish river values. In fact, well-planned projects are compatible with and enhance river protections, and there are many examples of timber management and wildfire threat reduction in Wild and Scenic River corridors, including on the Flathead Wild and Scenic River.

Claims that suitability findings would prevent, limit, or curtail timber management, fuels reduction, and timber related wildlife habitat work should be struck from the planning analysis and suitability determinations biased towards these claims should be re-evaluated.

c. The Forest Service incorrectly found many rivers not suitable based on misinterpretations of limitations on

restoration activities.

Across the analysis of many rivers the Forest Service claims that Wild and Scenic eligibility or suitability would prevent, limit, or curtail aquatic and upland restoration work. This unfounded premise creates a false choice between river protection and river restoration. The FSH clearly states that the Agency may conduct stream and upland restoration activities in an eligible or suitable Wild and Scenic River corridor. The Interagency Council agrees. The Forest Service would only need to ensure that restoration activity would not have a [ldquo]direct and adverse effect[rdquo] on, or [ldquo]substantially interfere with,[rdquo] the recognized values of the river. This is a very permissive standard, based on section 10(a) of the Wild and Scenic Rivers Act that allows such uses, and places no undue or significant burden on the Agency, particular in light of the many assurances in the plan that the Agency will protect the values whether or not they are deemed eligible or suitable for designation. Furthermore, many recognized values would benefit from restoration work, and such work would be highly compatible with eligibility or suitability findings.

Claims that suitability findings would prevent, limit, or curtail restoration work should be struck from the planning analysis and suitability determinations biased towards these claims should be re-evaluated.

f. The Forest Service incorrectly found many rivers to be not suitable because they are in wilderness.

The Forest Service arbitrarily found many rivers unsuitable partially or entirely because they flow through designated wilderness. Bear Creek and Moose Creek are prime examples.

Obviously, many designated Wild and Scenic Rivers flow through designated wilderness, including the Selway River, Salmon River, and Middle Fork Salmon River in Idaho. The Interagency Wild and Scenic Rivers Council concurs:

Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges and designated wilderness. Each designation recognizes distinct values for protection, and management objectives generally designed to not conflict. In some cases, WSR designations extend beyond the boundaries of other administrative or congressional area designations, thereby providing additional protection to the free-flowing condition and river values of the area.<sup>14</sup>

Wilderness areas do convey some level of protection to rivers flowing through them because they disallow road construction, for example, yet it is unreasonable - and unmoored from the common practice of designating such rivers - to find such rivers broadly or consistently unsuitable. Wilderness does not protect rivers against water developments and does not stop the development of mining claims that existed prior to an area[rsquo]s designation as wilderness. Simple protection by artifact of wilderness designation also does not provide assurances that the ORVs identified and monitored under a finding of Wild and Scenic eligibility or suitability will be protected. Nowhere in the Wilderness Act or within the Wilderness Character Monitoring Framework are river values specifically identified, characterized, or monitored for change against thresholds intended specifically to protect them. Asserting that there are no compelling benefits to layering Wild and Scenic protections on top of wilderness is unfounded. We also note that the Forest Service finds rivers unsuitable both because some rivers

are under protected designations like wilderness, and also because other rivers are not protected as wilderness, in a classic catch-22.

Logic basing findings of not suitable on protections conveyed by wilderness designation should be struck from the planning analysis and suitability determinations biased towards such claims should be re-evaluated.

g. The Forest Service incorrectly found many rivers to be not suitable because they are protected by other unspecified plan components.

Many rivers were found not suitable based on the unproven assumption that [ldquo]management under Land Management Plan components and direction will provide protection and direct benefits to the river values and will serve to preserve them during the life of the plan.[rdquo]15 The Forest Service consistently asserts that:

[ldquo]aquatic and riparian plan components and direction in the Land Management Plan demonstrate the Forests[rsquo] commitment to maintaining high-quality, free flowing water, and healthy, functioning riparian areas. The comprehensive nature of the aquatic and riparian plan components will provide protections and direct benefits for the fish species and their habitat.[rdquo]16

Further, the Forest Service describes how the persistence of river values despite past management actions [ldquo]demonstrates the Forest[rsquo]s commitment to protect [fish, wildlife, and habitat], and effectiveness of management controls.[rdquo]17 The Forest asserts that its previous track record demonstrates a trust that should be extended into the future under the new Forest Plan and its components to protect rivers found not suitable.

Yet, while mentioned generally, no specific components are given to justify not suitable findings, nor are explicit links made between components and protection of river values for ORVs identified through eligibility. As detailed below in section C.5, the new Forest Plan reduces the size of longstanding PACFISH/INFISH buffers of 300 feet to 100 feet, meaning that forest management activities not solely designed to restore and enhance aquatic and riparian- associated resources will be happening closer to rivers than in the past.

Given the reduction in buffer size and thus the reduction in general river and riparian protections within the buffer, it is clear that rivers found not suitable will not be adequately protected under the plan. Using repeated false assurances that other plan components will protect rivers as an excuse to find rivers not suitable is dishonest and unfounded. The decrease in quality of river protections within riparian buffers instead creates a more, rather than less, compelling case to find rivers suitable.

Logic basing findings of not suitable on other plan components should be struck from the planning analysis and

suitability determinations biased towards such claims should be re- evaluated.

h. The Forest Service incorrectly found many rivers to be not suitable because it wrongly asserts they lack exemplary values.

For numerous rivers the Draft ROD makes arbitrary claims that a river's values are not unique, exemplary, or worthy of suitability. One example is Old Man Creek:

[Idquo]Additionally, I do not believe the scenic splendor is so unique or rare, or otherwise contribute to vital national conservation purposes to warrant consideration as a Wild and Scenic River.[rdquo]18

And regarding Warm Springs Creek:

[Idquo]Additionally, I do not believe these river values are so unique, rare, or otherwise contribute to vital national conservation purposes to warrant consideration as a Wild and Scenic River.[rdquo]19

These arbitrary [Idquo]beliefs[rdquo] are directly refuted by the eligibility report generated by the Agency's own experts that determined these rivers have Outstandingly Remarkable Values that qualify them for Wild and Scenic designation. As an example, in contrast with the above statement, the Forest Service admits in the FEIS that [Idquo]The two that stand out as unique or exemplary are Jerry Johnson Hot Springs in Warm Springs Creek and Stanley Hot Springs in Huckleberry Creek.[rdquo]20 The suitability analysis contributed no new information to disprove the expert assessments in the eligibility report and yet reaches the opposite conclusion.

Logic basing findings of not suitable or lack of uniqueness are in direct conflict with documented contrary evidence and should be struck from the planning analysis, and suitability determinations biased towards such claims should be re-evaluated.

#### River-Specific Non-Suitability Determination Issues

i. The North Fork Clearwater River was incorrectly found not suitable.

The Forest Service presents a lengthy analysis and discussion of the merits of suitability for the North Fork Clearwater River and rightly highlights the ORVs of recreation, scenic, cultural, Nez Perce cultural, fish, wildlife, and botany.

During the discussion of recreational values possessed by the North Fork Clearwater in Draft ROD Appendix I, the Forest Services attempts to argue that due to the proximity of other rivers known for their boating



opportunities, the North Fork is somehow less suitable. This argument misses the mark of precisely why this river is deserving. Many boaters seek the North Fork Clearwater and its tributaries to avoid the crowds and popularity of the Lochsa, Middle Fork Clearwater, or other popular stretches within the general area. Montana boaters frequent the Lochsa and the South Fork Clearwater River early season when Hoodoo Pass remains impassable. The North Fork Clearwater River is to northern Idaho boaters what the Lochsa is to Montana paddlers due to its proximity and accessibility, and Hoodoo Pass's late snowmelt creates

a window when these paddlers enjoy more exclusive access with less competition. Further, the North Fork Clearwater River is unique in that it provides nearly 80 continuous unpermitted forested boatable miles punctuated by an unmatched number of dispersed campsites, characteristics that differentiate it from popular multi-day and day-trip rivers like the Lochsa, Selway, Middle Fork Clearwater, Main Salmon, and Middle Fork Salmon. Section 1(b) of the Wild and Scenic Rivers Act clearly states that the intent of the Act is to ensure that rivers that possess qualified ORVs be protected for the benefit and enjoyment of present and future generations. Simply because other regional rivers provide similar benefits should have no bearing on suitability.

A similar argument is made regarding angling and fly fishing within the corridor, which is renowned by anglers and attracts out-of-state visitors from beyond the region of comparison. The Draft ROD notes that "Fishing pressure is increasing more dramatically in the upper reaches including Black Canyon."21 Although Dworshak reservoir prevents migration of fish from lower reaches below the dam to its headwater tributaries, this barrier also serves to prevent introduction of invasive aquatic, thus making this river unique. The North Fork Clearwater remains one of the few streams in which anglers can legally fish for and catch bull trout, and it possesses the same high quality angling benefits as Cayuse Creek, Kelly Creek, and its tributaries, which were found suitable.

While the Forest characterizes changes in recreational visitor use, it inaccurately states that "Implementation of any actions to address the need for additional dispersed or developed recreational areas could potentially be restricted because permanent protection and enhancement of all ORVs may not be feasible during or as a result of these activities."22 By definition, recreational classified segments allow development of recreation, administrative, and river access facilities in close proximity to the river23 (consistent with the confined nature of this river corridor). The assumption that managing evolving recreational needs will be hampered by Wild and Scenic protections is unfounded.

FEIS Appendix F presents conflicting information regarding the likelihood of future hydroelectric projects within the river corridor. In question 10, the Forest states that "the history of damming on the river and the number of potential dam sites remaining on the river suggest legislation may be needed to prevent future dam building."24 By moving forward with a suitable determination, this threat would be alleviated. However, the Forest contradicts this statement in question 12 stating, "the feasibility of hydrologic development seems highly unlikely in the foreseeable future."25 Given that the life of this forest plan is expected to be 15-30 years, the agency cannot reasonably foresee whether or not hydropower development will occur on this river corridor. There are a multitude of factors that could affect this potential in the next 15-30 years, including but not limited to: political administration changes, new federal climate policies/laws, electric utility decisions, etc. One could reasonably argue that hydroelectric development could increase in the coming decades given the heightened concern over fossil fuels and the need to switch over to more renewable forms of energy.

In general, the appetite to advance new hydroelectric projects is much higher for rivers that already have dams and reservoirs or for which potential sites have been identified. The North Fork Clearwater River has previously been evaluated for hydropower development, with a number of feasible sites identified.<sup>26</sup> Per the Idaho Department of Water Resources North Fork Clearwater Basin Component of the Comprehensive State Water Plan: [ldquo]The upper North Fork Clearwater River (above slack water of Dworshak reservoir) and its tributaries have substantial hydroelectric potential. In an inventory report done for IDWR by the University of Idaho's Water and Energy Resources Research Institute, there have been 26 potential hydroelectric sites identified in the upper basin with a total capacity of 3,006.2 megawatts.[rdquo]<sup>27</sup> The Comprehensive State Water Plans cannot protect rivers and streams from dams and water diversions. A non-federal entity can bypass the state and apply for a license from FERC to construct a dam or other project works on federal lands. Furthermore, the Comprehensive State Water Plans can be easily changed at any time. These plans are not subject to NEPA, and the State of Idaho does not have an equivalent statute. The Forest Service's claim that Wild and Scenic protections are not necessary for this river segment due to low potential hydropower development is entirely speculative and inconsistent with research and state water resources authorities.

While the North Fork Clearwater basin encompasses over 800,000 acres and is deserving of landscape scale restoration, the eligible river corridor in question, concerning management direction compatible with the Wild and Scenic Rivers Act, is just over 25,000 acres or roughly 3.125% of the total drainage acreage. The Forest conflates restrictions that would apply for the corridor with the entire drainage stating:

[ldquo]Management activities to improve forest health, enhance wildlife and fish habitat, and achieve desired future conditions could be effect or foreclosed with designation[rdquo]<sup>28</sup> [ldquo]...interim protection measures could reduce the ability to restore both aquatic and upland habitats.[rdquo]<sup>29</sup>

[ldquo]...restorative work in the corridor or uplands to other ecological needs may be limited due to the interim protective measures in the adjacent river corridor. This, in turn, would limit the resources available to mitigate water quality concerns within the river corridor.[rdquo]<sup>30</sup>

[ldquo]Applying interim protection measures that could potentially become permanent would limit the restoration work adjacent and within the corridor. This in turn could reduce the ability of the Forest to fund projects that both protect and enhance the fisheries ORV and protect the recreation ORV.[rdquo]<sup>31</sup>

[ldquo]...if the coastal disjunct systems are priority, their protection may demand management actions within the corridor, potentially at the expense of some other outstandingly remarkable value or other resource values. This could set up an untenable situation to protect and enhance competing outstandingly remarkable values without the flexibility to allow for some diminishment of any of them.[rdquo]<sup>32</sup>

[ldquo]...prioritizing the protection and enhancement of these seven values, through designation, in this relatively small area could potentially adversely affect the ability to implement other needed ecological restorative activities within the river corridor and adjacent areas.[rdquo]<sup>33</sup>

[ldquo]The application of interim protection measures through designation could benefit the seven outstandingly remarkable values, as intended, or complicate or eliminate the ability to implement actions to protect them.[rdquo]<sup>34</sup>

However, earlier in the conclusion presented in the Draft ROD Appendix I, the Forest Service clearly states that [ldquo]Designation as a wild and scenic river does not prohibit management activities within a river corridor or adjacent lands.[rdquo]35 While designation requires that management activities be conducted in a thoughtful and intentional manner, it is inaccurate to assume that the desired management activities intended to return the drainage, as well as the river corridor, to desired conditions or manage climatic change would be [ldquo]foreclosed[rdquo] as a result of designation. Nowhere in the Draft ROD is this erroneous claim stated more frequently and in more different ways than for the North Fork Clearwater River. As stated elsewhere (see 4.c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river[rsquo]s values are allowed. The fact that protecting the rivers[rsquo] values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable. The Forest incorrectly interprets how curtailed their management prescriptions would be within this corridor and the relatively small percentage of the drainage that these restrictions would apply to.

The conclusions and claims relied upon in finding the North Fork Clearwater River unsuitable are not supported by evidence, factually sound, or consistent with Agency policy.

j. The South Fork Clearwater River was incorrectly found not suitable.

Like other rivers, the South Fork of the Clearwater River was deemed unsuitable in all alternatives with little rationale provided. The South Fork has several extraordinary and well- documented values including more walk-and-wade streambank miles than other rivers, unmatched B-run steelhead fishing, important cultural fisheries values to the Nez Perce Tribe, and challenging whitewater boating sections that are well-known and paddled by many Lochsa enthusiasts. The Forest Service[rsquo]s characterization of the Golden Canyon and Micky Mouse runs as sub-par is uninformed at best. The river has appeared in narrowly curated guidebooks as a destination, and recently appeared in films highlighting the river[rsquo]s impressive power and rapids. The Forest Service admits that the South Fork [ldquo]provides the same values as the Middle Fork Clearwater, Lochsa, and Selway rivers on the Forest that are already protected through designation as wild and scenic rivers,[rdquo]36 yet arbitrarily finds it unsuitable.

The Forest Service discloses the need to maintain State Highway 14 and power lines, which is allowed in Wild and Scenic corridors. The Lochsa Wild and Scenic River along State Highway 12 is a classic example of highway management along a corridor prone to landslides and avalanches that receives significantly more traffic than State Highway 14. The Forest Service further cites the Agency[rsquo]s desire to log up to 6,014 acres without the hindrance of protecting the river values. The many values of the South Fork, and in particular Golden Canyon, far outweigh the added requirement to protect values during logging operations, and indeed much of Golden Canyon is not heavily forested or even accessible to logging operations.

Like for other rivers, the Forest Service[rsquo]s opposition to finding rivers suitable is based on the following false premise:

[ldquo]Protections through designation would only allow management activities that prioritize the protection and enhancement of these outstandingly remarkable values. This could potentially adversely affect the ability to implement other ecological restoration activities within and beyond the river corridor.[rdquo]37

As stated elsewhere (see 4.c-e above), this is false. Restoration activities are entirely permissible in Wild and Scenic River corridors, as well as beyond the corridor. The Forest Service irrationally claims that it has and will protect the river values, yet claims it must avail itself of a tool which requires it to protect river values while engaging in those activities.

The conclusions and claims relied upon in finding the South Fork Clearwater River unsuitable are not supported by evidence, factually sound, or consistent with Agency policy.

k. Bostonian Creek, Boundary Creek, Caledonia Creek, Graves Creeks were incorrectly found not suitable. The Draft ROD acknowledges that:

[ldquo]Eligible stream segments included in this group comprise the most significant complex of modeled climate shield reaches for bull trout persistence in 2040 within the region of comparison. The highest known numbers of fluvial and adfluvial bull trout within the region of comparison spawn in these streams, and habitat supports very high densities of juveniles.[rdquo]

Yet, the Draft ROD contains conflicting claims that [ldquo]Wild and Scenic River designation may impede or create unnecessary barriers in treating fuels and addressing the wildfire crisis.

Designation may also limit tools and adaptation strategies needed to increase resiliency to climate change.[rdquo] In fact, the Wild and Scenic Rivers Act does no such thing. The Forest Service has a robust suite of tools to treat fuels and adapt to climate change. The Forest Service has also been directed to prioritize climate resilience protections (see 4.a. above). Agency policy is clear that timber management and restoration activities are allowed within Wild and Scenic corridors so long as river values are protected. Agency policy is clear that active timber management is permitted (see FSH 1909.12 Section 84.3(9)), that [ldquo]WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.[rdquo]38

The conclusions and claims relied upon in finding Bostonian Creek, Boundary Creek, Caledonia Creek, Graves Creeks unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy and 30x30 climate direction.

l. Crooked Fork Creek, Brushy Fork Creek, Hopeful Creek were incorrectly found not suitable.

These are important headwaters of the currently designated Lochsa Wild and Scenic River. Alternative Z acknowledged their ecological importance to basin integrity by finding Crooked Fork Creek and Brushy Fork Creek suitable, though Hopeful Creek was found not suitable in any alternative. These streams are three of only 28 projected to provide cold water refuge for bull trout and westslope cutthroat trout, unique attributes which the Forest Service falsely discounts as common in the Draft ROD. Although the Nez Perce-Clearwater National

Forest is river rich, the small number of science-supported cold water refuge streams are truly unique and their protection is supported under the administrative 30x30 initiative (see 4.a above).

Among other values acknowledged in the Draft ROD Appendix I, p. 56-60 is one of the most important harlequin duck populations, which is culturally significant to the Nez Perce Tribe for regalia and oral history. Overall, the Forest Service found 70% of streams identified as having cultural value to the Nez Perce Tribe unsuitable, in contradiction to commitments to embrace tribal sovereignty and protect culturally important places and species on the forest.

Cold water refuge streams and important harlequin duck populations provide ample evidence of uniqueness, which is in conflict with the unfounded statement: [ldquo]I do not believe these river values are so unique, rare, or among the best representatives of these features that they rise to a level of significance, or otherwise contribute to vital national conservation purposes to warrant consideration as a Wild and Scenic River.[rdquo]39

The suitability study erroneously claims that motorized use will be curtailed on these segments. However, recreational classification for Crooked Fork Creek and Brushy Fork Creek

will continue to allow motorized use on the numerous roads mentioned in the Draft ROD. The Forest Service speculates in the Draft ROD that this area will see [ldquo][hellip]new wildland urban interface with fuels reduction needs[rdquo]40 and claims that [ldquo]Land Management Plan components and direction will provide protection and direct benefits to the river values and will serve to preserve them during the life of the plan while allowing for resource management to meet other Plan desired conditions that might otherwise be foreclosed.[rdquo]41 As stated elsewhere (see C.4.c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river[rsquo]s values are allowed. The fact that protecting the rivers[rsquo] values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy.

m. Upper Lochsa, Big Sand Creek, North Fork Storm Creek, South Fork Storm Creek were incorrectly found not suitable.

These are among the most striking examples of streams with overwhelming outstanding values and public support, though are found not suitable in any alternative because of the Forest Service[rsquo]s interest in logging these watersheds without the hindrance of protecting the river values. Both the rivers on this list that are off-the-table for logging due to Wilderness designation (Big Sand Creek, and the forks of Storm Creek), as well as those more open to logging paradoxically (and arbitrarily) receive the same outcome of unsuitability. There is simply no single rational rationale that could produce unsuitability findings for all of these exceptional streams.

The Draft ROD states that forest restoration activities and fuels reduction activities would be [ldquo]precluded or made more complex were these streams managed under the WSR protections.[rdquo]42 As stated elsewhere (see 4.c-e above), such activities would not be precluded by WSR protections. Agency best practice is clear that while restoration activities should seek to protect and enhance river values, they do not prevent restoration work from occurring.43 Claims to the contrary are false. Restoration and timber activities are allowed, and generally all uses that do not substantially interfere with the river[rsquo]s values are allowed. The fact that protecting the river[rsquo]s values may add a layer of complexity when designing these projects is not a reason to find the river unsuitable. These are Wild and Scenic eligible streams, and are worth a relatively small amount of added effort to protect their values.

To find the upstream extensions of the Wild and Scenic Lochsa River and its primary wild headwaters not suitable across all alternatives is flatly wrong and an egregious abuse of discretion. These streams are truly extraordinary and boast incredible recreational, fisheries, wildlife, and scenic values. The conclusion in the Draft ROD that the streams[rsquo] ORVs do not rise to the level of a Wild and Scenic River is unfounded and runs counter to the findings of Congress on the inseparable Lochsa River directly downstream. These streams have vast public support for designation, and documented threats in the FEIS, Appendix F. There is no reason these streams should not be found suitable, and not even considering suitability in any alternative is arbitrary, capricious, and an abuse of discretion.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy.

n. Bear Creek, Cub Creek, and Brushy Fork Creek were incorrectly found not suitable.

Bear Creek is described within the DEIS Appendix F and Draft ROD Appendix I for its fisheries values supporting spawning and rearing habitat for multiple species. The large woody debris and natural gravel profiles from previous wildfires and the [ldquo]Salmon Hole,[rdquo] significant both ecologically and culturally to Indigenous peoples, are unique features of this river described in detail in the DEIS Appendix F, but which receive no mention in the Draft ROD Appendix I. The Draft ROD acknowledges that Bear Creek [ldquo]one of three places Nimi[rsquo]ipuu oral history indicates the Nez Perce Tribe originated from. It is also a traditional and significant place for the trail through the area linking the Clearwater valley with the Bitterroot valley as well as seasonal use of its fisheries and wildlife resources.[rdquo]44 The Draft ROD also acknowledges that the nexus of these unique values within the Selway-Bitterroot Wilderness is, in itself, a unique feature.

Yet, the Draft ROD claims that [ldquo]There is no benefit or compelling reason to support the application of permanent protection of these outstandingly remarkable values in these creeks, potentially at the expense of meeting other management goals.[rdquo]45 As stated elsewhere (see 4.c-e above), forest management, fuels management, and restoration would not be precluded by Wild and Scenic protections. Agency best practice is clear that while restoration activities should seek to protect and enhance stream values, they do not prevent restoration work from occurring.46

Wilderness areas do convey some level of protection to rivers flowing through them because they disallow road construction. Wilderness does not protect rivers against water developments and does not stop the development of mining claims that existed prior to an area's designation as wilderness. Simple protection by artifact of wilderness designation also does not provide assurances that the ORVs identified and monitored under a finding of Wild and Scenic suitability will be protected. Nowhere in the Wilderness Act or within the Wilderness Character Monitoring Framework are river values specifically identified, characterized, or monitored for change against thresholds intended to protect them. Asserting that there are no compelling benefits to Wild and Scenic suitability simply because wilderness protects against road building is unfounded.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy.

o. Moose Creek, North Fork Moose Creek, West Moose Creek, East Fork Moose Creek, Rhoda Creek, Wounded Doe Creek were incorrectly found not suitable.

The Forest Service analysis is ripe with evidence of the outstanding values of these streams, including river and basin integrity and the highest known numbers of spawning fluvial bull trout in the Selway Basin<sup>47</sup>, and offers not a single reason to find them not suitable. Similar to Bear Creek and tributaries above, these rivers are entirely in designated wilderness, and are contiguous with the federally designated Selway Wild and Scenic River.

Wilderness areas do convey some level of protection to rivers flowing through them because they disallow road construction, for example. Wilderness does not protect rivers against water developments and does not stop the development of mining claims that existed prior to an area's designation as wilderness. Simple protection by artifact of wilderness designation also does not provide assurances that the ORVs identified and monitored under a finding of Wild and Scenic suitability will be protected. Nowhere in the Wilderness Act or within the Wilderness Character Monitoring Framework are river values specifically identified, characterized, or monitored for change against thresholds intended to protect them. Asserting that there are no compelling benefits to Wild and Scenic suitability simply because wilderness protects against road building is unfounded.

On one hand, if rivers are already protected from logging then they are deemed not suitable for Wild and Scenic designation because there is no need. On the other hand, if rivers are not already protected from logging then they are deemed not suitable to allow for unhindered logging to occur. This inherent contradiction shows the arbitrary nature of the Forest Service's approach to suitability on this Forest, and the irrational conflicting bar that rivers must meet to merit protection as Wild and Scenic.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

p. Lolo Creek was incorrectly found not suitable.

The Forest Service analysis documents the many outstanding values of Lolo Creek including high quality habitat

for fisher, steelhead, native spring Chinook Salmon, and Pacific lamprey; whitewater boating; and cultural and historic importance to the Nez Perce Tribe due to its proximity to the Nez Perce Trail, which parallels, is within, and crosses the river. There is, however, no mention of the vast support in the record for finding Lolo Creek suitable, and indeed most of the suitability questions are simply left blank in the analysis in the FEIS Appendix F.

The Draft ROD states that [ldquo]Permanent protections through designation [hellip] could potentially adversely affect the ability to implement ecological restoration activities within and near the river segment found eligible.[rdquo]48 As stated elsewhere (see 4.c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river[rsquo]s values are allowed. The fact that protecting the rivers[rsquo] values may add a layer of complexity when designing projects is not a valid reason to find rivers not suitable.

The Draft ROD claims that:

[ldquo]Designation as a Wild and Scenic River could potentially change this [Tribal and recreational] access if impacts from the roads were determined to adversely affect the fish or wildlife outstandingly remarkable values.[rdquo]49

[ldquo]...permanent protection of the identified outstandingly remarkable values, which would be at the expense of other management goals and actions needed to enhance resources, associated with the Tribe[rsquo]s reserved Treaty rights improve fish habitat, address the wildfire crisis, and restore forests ravaged by insects and disease.[rdquo]50

These false statements erroneously pit river protection against Tribal sovereignty, when in fact the two go hand in hand. The Forest Service offers no evidence to back this hyperbolic claim of conflict. Recreation is an ORV on Lolo Creek and Tribal uses of the stream should be. Those uses, including access, would need to be protected under the Wild and Scenic Rivers Act. Furthermore, we are aware of no examples of road closures of this nature.

Lolo Creek downstream of the Forest Service managed reach has been deemed suitable by the Bureau of Land Management. The Forest Service considered a similar case of adjacency regarding the Little North Fork of the Clearwater, in which the Nez Perce-Clearwater National Forest deferred to the Idaho Panhandle National Forest to match the adjacent finding (of eligibility). It is arbitrary and capricious to show deference to adjacency findings within its own agency but not to the Department of Interior, an equally important manager of the Wild and Scenic River System overall.

The conclusions and claims relied upon in finding Lolo Creek unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

q. Elk Creek was incorrectly found not suitable.



The Forest Service analysis of Elk Creek rightly recognizes its extraordinary scenic and recreational values— a unique series of five waterfalls and pools used for swimming and soaking accessed by a popular family-friendly trail— yet finds this river not suitable. Suitability would be tightly aligned with the emphasis on recreational management of the area. The Forest Service recognizes that “Changes to land use are not anticipated since much of the area has been managed to protect the waterfalls and the national recreation trail.”<sup>51</sup> Instead of recognizing the current and reasonably foreseeable conditions as persuasively strong evidence, the Forest Service instead bases its not suitable finding on hypothetical scenarios in which future recreational management priorities could change or instream flow management could change. This reliance on fabricated hypothetical scenarios over well-documented facts and values in deeming Elk Creek not suitable is arbitrary and capricious.

The Forest Service incorrectly bases the not suitable finding on a claim that “Elk Creek is currently not free flowing.”<sup>52</sup> Agency policy is clear that “any section of river with flowing water meets the technical definition of free flowing, even if impounded upstream,” and that “Congress and the Secretary of the Interior have designated many river segments which are above or below dams that have regulated flows.”<sup>53</sup> Elk Creek is free flowing and the upstream impoundment is immaterial to its suitability. The finding that “Elk Creek is not suitable for designation as a Wild and Scenic River in the forest plan due to the lack of certainty around future water supply”<sup>54</sup> is based solely on a hypothetical scenario of changes to instream flows, and there is no evidence that such a small impoundment could eliminate the scenic waterfalls through flow reductions during any but the driest times.

The Forest Service also bases the not suitable finding on the unfounded claim that “vegetative management in the river corridor is necessary for community fire protection. Such activities can be hampered or foreclosed by designation and subsequently the need to emphasize, protect and enhance the outstandingly remarkable values.”<sup>55</sup> As stated elsewhere (see C.4.c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river’s values are allowed. The fact that protecting the river’s values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable.

The conclusions and claims relied upon in finding Elk Creek not suitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

r. Beaver Creek, Elmer Creek, Isabella Creeks were incorrectly found not suitable.

The Forest Service finds these streams not suitable based on a claim that protecting the botany ORV would be “potentially at the expense of meeting other management goals or restricting future action that could actually protect the ORV itself, especially in the face of climate change.”<sup>56</sup> Yet, the Agency does not explain what “other management goals” the protection of the botany ORV would conflict with. It is nonsensical to claim that protecting the ORV would limit actions that would harm the ORV. As stated elsewhere (see C.4.c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river’s values are allowed. The fact that protecting the river’s values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable.

The conclusions and claims relied upon in finding Beaver Creek, Elmer Creek, and Isabella Creek not suitable for

Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

s. Lake Creek (Lochsa tributary) was incorrectly found not suitable.

The Forest Service wrongly based its not suitable determination for Lake Creek on the assessment that fisheries resources [ldquo]are ubiquitous across the region of comparison[rdquo] and not [ldquo]so unique, rare, or among the best representatives of these features that they rise to a level of significance.[rdquo]57 These statements directly conflict with the following:

[ldquo]The eligible segment is included as a major spawning area for Snake River steelhead trout and is designated critical habitat for both steelhead and Columbia River bull trout. A bull trout local population has been identified in Lake Creek. Fish Lake contains an adfluvial population of bull trout, which is one of only two within the region of comparison [emphasis added].[rdquo]58

It defies logic to claim that one of only two adfluvial populations of ESA listed bull trout in the region (in Fish Lake, which drains into Lake Creek) is not [ldquo]rare[rdquo] and that it is [ldquo]ubiquitous.[rdquo]

Like on other rivers, the Forest Service also based this not suitable determination on the claim that suitability would have [ldquo]no apparent benefit or compelling reason that supports the application of permanent protection of these fish outstandingly remarkable values, potentially at the expense of meeting other management goals[rdquo]59 without actually delineating those goals. This river is in a gorge, across the Lochsa from Highway 12, and flows through Wilderness and a Roadless Area. The claim that there are conflicts with management goals has no basis in the record.

The conclusions and claims relied upon in finding Lake Creek not suitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

5. The Forest Service incorrectly adopts riparian zone policies that do not adequately protect ESA-listed species.

The Forest Service, in both the FEIS and Forest Plan, outlines a significant change in strategy regarding what is permissible in riparian areas. PACFISH/INFISH guidelines were implemented in 1995 as a means to arrest stream habitat degradation and protect the natural processes that maintain habitat for native fish. The Forest Service acknowledges the successes of the PACFISH/INFISH policy to meet stated objectives consistent with agency goals and objectives: [ldquo]Strategies employed by the Northwest Forest Plan, PACFISH, and INFISH appear to have been successful at halting the loss of old growth due to timber harvest within riparian areas and at preventing damage to aquatic systems in the Pacific Northwest (Thomas et al. 2006) and the intermountain region.[rdquo]60 While the PACFISH/INFISH strategies were meant as interim policies, the replacement strategy outlined in the Aquatic Ecosystems plan ([ldquo]new strategy[rdquo]) does not adequately protect ESA-listed

salmonids and designated Critical Habitat as required in the 2012 Planning Rule, other USFS regulation and guidance, and under ESA regulations.

The new strategy classifies riparian areas as [ldquo]Riparian Management Zones[rdquo] (RMZ), with an inner and an outer zone that total the same riparian buffer widths as those prescribed by the current PACFISH/INFISH Riparian Habitat Conservation Areas (RHCA). However, by segmenting the riparian zone into inner and outer layers, the new plan opens the door for a wide spectrum of vegetation management activities, some of which have the potential to negatively impact ESA-listed fish and their habitat.

The Forest Service states,

[ldquo]Vegetation management may occur in the outer Riparian Management Zones to meet desired conditions for fuel loading and silvicultural desired conditions [emphasis added], so long as project activities retain functions of the outer Riparian Management Zone, including sediment filtering, large wood recruitment to streams, and protection of the inner Riparian Management Zone from windthrow.[rdquo]61

In this way, the Forest Service effectively shrinks down the riparian buffer zone from extractive timber activities - 300 feet in RHCA's surrounding fish-bearing streams, to 150 feet in RMZs of the same type. Language in the above related to fuel loading and silvicultural desired conditions makes management in the outer zone of a RMZ more similar to Forest-wide management and lowers the burden of proof on timber harvest activities in riparian areas by not including the [ldquo]restore or enhance aquatic and riparian resources[rdquo] phrasing. While there is [ldquo]do not retard attainment[rdquo] language included in FW-STD-RMZ-01 for aquatic/riparian desired conditions, this is certainly not the same as requiring all RMZ vegetation management to [ldquo]restore or enhance[rdquo] said resources. When coupled with the pattern of language throughout the Forest Plan that attempts to establish PACFISH/INFISH riparian buffers as [ldquo]larger than adequate,[rdquo] our concern is that the new RMZ buffers are now narrower in width and more permissive of timber harvest activities similar to those conducted beyond riparian areas - to the detriment of both ESA-listed and other important native fish. These riparian management alterations mark a distinct paradigm shift away from PACFISH/INFISH strategy that has been so successful at halting stream degradation.

The Forest Service must recommit to protective measures and buffer sizes/restrictions that [ldquo]restore or enhance aquatic and riparian resources,[rdquo] particularly if it uses other protective plan measures as a generic and common rationale for finding rivers not suitable for Wild and Scenic protections.

D. A statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection.

On September 15, 2017, American Rivers commented on the Nez Perce-Clearwater National Forest[rsquo]s proposed evaluation of Wild and Scenic eligible rivers for suitability. These comments detail the legal basis for

American Rivers request that the Nez Perce-Clearwater National Forest omit or defer the suitability process. On October 19, 2018, American Rivers, American Whitewater, Idaho Rivers United, and Outdoor Alliance submitted comments regarding the published 2017 eligibility and suitability study. These comments echo the main arguments in this objection and urged the Forest to reconsider their approach to suitability and if suitability was to be determined, recommended that all 88 rivers included within the study retain interim protections. On April 20, 2020, American Rivers commented on the Nez Perce- Clearwater National Forest's Draft Revised Forest Plan and Draft Environmental Impact Statement. These comments echoed those from 2017 and 2018, illustrated how the Nez Perce- Clearwater National Forest's thorough documentation of ORVs stands in stark contrast to its conclusion that eligible streams are unsuitable for designation, and failed to consider a full range of alternatives.

We look forward to working with the Reviewing Officer on these important issues and remedies.

Warm regards,

Lisa Ronald

Western Montana Associate Conservation Director American Rivers